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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,139	10/01/2002	Kees Frederik Van Malssen	EL 905055840 US	2743

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Pitney Hardin Kipp & Szuch
685 Third Avenue
New York, NY 10017

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/048,139

Applicant(s)

VAN MALSSSEN ET AL.

Examiner

Carolyn A Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1-26-04
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5-6-02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the

application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The specification contains a page of references at page 9 and a discussion of these references at pages 3 and 4. It is requested that applicant reduce the substance of page 9 to an Information Disclosure Statement and insert the full citations into the specification. The references, in particular on page 9, will most probably be deleted from the specification prior to issuing this patent application.

Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 utilizes the passive voice in the recitation "preparation" at line 3. An amendment to the claim converting the claims into active form would overcome the rejection. Claim 2 refers to a liquid substance and it is unclear what liquid substance is being discussed. Is this the liquid chocolate mass or some other liquid? If this substance only accounts for 10-20 % of the fat content of the final mixture, then what other ingredients are intended to be added? An amendment to the claim clarifying this issue would overcome the rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Cain (0,521,205).

Cain discloses making tempered chocolate. Here chocolate is heated to 30-40 C to form a liquid chocolate. Then the chocolate is seeded with beta stable crystals at a temperature at which the seeds do not melt, preferable 35 C(page 3, lines 34-41). Then the mixture is allowed to cool. Evidence for the composition of chocolate is provided by its standard of identity (21 CFR 163.123).

Applicant defines the various temperature criteria for claim 1 at pages 2-4 or the specification and the Cain reference appears to disclose all of these temperature features.

Claims 1, 3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Soeters (4,283,436).

Soeters discloses chocolate manufacture at column 14. Here chocolate is heated to 60C for one hour. Then the temperature of the chocolate is lowered to 30C and the chocolate mass is seeded with 0.1% stabilized crystals from the pre-conched mass. Finally the chocolate is cooled. The preparation of the stabilized crystals is disclosed at columns 11 and 12.

Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soeters (4,283,436).

Soeters discloses chocolate manufacture at column 14. Here chocolate is heated to 60C for one hour. Then the temperature of the chocolate is lowered to 30C and the chocolate mass is seeded with 0.1% stabilized crystals from the pre-conched mass. Finally the chocolate is cooled. The preparation of the stabilized crystals is disclosed at columns 11 and 12. Claim 4 appears to differ in the recitation of the cooling rate of

the product but to cool the Soeter's product at a rate that is sufficient to provide for a stable chocolate product is not alone seen to constitute unobviousness. Claim 6 appears to differ in the recitation of a first stream and a second stream. Soeter provides for the preparation of a chocolate seed product. To cool the chocolate seed of Soeters at a rate that is sufficient to provide a stable chocolate seed is not alone seen to constitute unobviousness. The fact that the chocolate seed preparation is not described as a stream is not alone seen to constitute unobviousness.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Willcocks (WO 98/30108).

Willcocks discloses the manufacture of chocolate in example 5 on page 63. The formulation contains sugar and chocolate liquor, as shown in example 1. In example 2, the chocolate is cooled from 45 to 33.5C for the addition of the cocoa butter seedling agent. The cocoa butter seeding agent is made from solidified cocoa butter. The most stable fat crystals are used in Willcocks and these crystal forms are called V and V1 polymorphs (p 28),

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willcocks (WO 98/30108).

Willcocks discloses the manufacture of chocolate in example 5 on page 63. The formulation contains sugar and chocolate liquor, as shown in example 1. In example 2, the chocolate is cooled from 45 to 33.5C for the addition of the cocoa butter seedling agent. The cocoa butter seedling agent is made from solidified cocoa butter. The most stable fat crystals are used in Willcocks and these crystal forms are called V and V1 polymorphs (p 28). At example 1, 20.49% cocoa butter is used. Although 10-20% is not exactly mentioned in this claim, no unobvious or unexpected result is seen from the difference in liquid content set forth in claim 2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status

information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Carolyn Paden
CAROLYN PADEN 3-18-04
PRIMARY EXAMINER
GROUP ~~1800~~ 1761